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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/884,656 | 06/20/2001 | Sharon Durst | 1578 | 4479 |
| 7590 | 03/17/2004 | | EXAMINER | |
| Mark C. Jacobs, Esq. 3033 El Camino Avenue Sacramento, CA 95821 | | | RHEE, JANE J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1772 | |

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|--------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/884,656 | DURST ET AL. |
| Examiner | Art Unit | |
| Jane J Rhee | 1772 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 November 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 7 and 10-13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 7 and 10-13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6) Other: _____

DETAILED ACTION

Withdrawn Rejection

1. The Claim objections of claim 7 and 13 and 112 second paragraph rejection of claim 12 has been withdrawn due to applicants amendment in response 11/26/03.
2. The 35 U.S.C. 103 rejection of claim 12 over Applicant's admitted prior art in view of Klein et al. has been withdrawn due to applicant's amendment in response 11/26/03.

Rejections Repeated

3. The 35 U.S.C. 103 rejection over applicant's admitted prior art in view of Klein et al. of claim 11 has been repeated for the reasons previously stated in Paper 16.
4. The 35 U.S.C. 103 rejection over applicant's admitted prior art in view of Klein et al. and in further view of Dickson et al. of claims 9-10,13 has been repeated for the reasons previously stated in Paper 16.

Response to Arguments

5. Applicant's arguments filed 11/26/03 have been fully considered but they are not persuasive.

In response to applicants argument that applicant's admitted prior art fails to disclose a plurality of row of adjacent abutted sheets of UL listed ballistic fiberglass sheets having a UL listing of any UL level 1, UL level 2, or UL level 3, examiner respectfully disagrees. In page 6 line 26, applicant discloses that the

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adjacent panels and the batten has the same level of protection and furthermore on page 7 lines 10-11 applicant discloses that he wants to do away with the necessity of using a batten behind the plurality of sheets of *lower level ballistic* fiberglass therefore applicant's admitted prior art does disclose a plurality of row of adjacent abutted sheets of UL listed ballistic fiberglass sheets having a UL listing of any UL level 1, UL level 2, or UL level 3 since applicant teaches that lower level protection ballistic fiberglass are in various combinations of Level 1, Level 2, and Level 3 in page 6 line 33 and page 7 line 1.

In response to applicant's argument that Klein never says that the purpose of spacing employed is for the purpose of achieving a higher level of ballistic protection, first of all in Klein's abstract, Klein discloses that the panels are employed to resist penetration of a bullet or other projectile and furthermore in col. 3 lines 55-59, Klein discloses that *by virtue of the present array, the impact energy is transmitted throughout the panel system and is, thusly dissipated, [wherein] tremendously reduces the impact transmitted to the wearer which would otherwise occur* therefore Klein does disclose that the spacing employed is for the purpose of achieving a higher level of ballistic protection.

In response to applicant's argument that the nature of the material of Klein differs from the applicant, Klein was not used to teach fiberglass but solely used to teach the spacing employed for the purpose of achieving a higher level of ballistic protection. Applicant argues that there is nothing to tie Klein to the purpose of applicant's invention nor to the prior art teachings, the examiner respectfully disagrees. Klein and applicant's admitted prior art both teach

ballistic protection from the penetrations of a bullet. Klein teaches in Klein's abstract, that the panels are employed to resist penetration of a bullet or other projectile while applicant's admitted prior art teaches *bullet resistant barriers* *wherein the term bullet resistant signifies the protection that is provided against complete penetration passage of fragments of projectiles* in page 1 lines 9-12.

In response to applicant's arguments that Klein teaches that his layers are glued together and that Klein teaches hinging of the layers, this argument is irrelevant since applicant never claimed that it cannot be glued together or hinged.

In response to applicant's argument that there is no basis for one of ordinary skill in the art to have recognized that abutting sequentially a plurality of sheets of lower level protection ballistic fiberglass in various combinations and staggering the disposition of the sheets that the desired level of 4,5,7, or 8 of protection can be achieved since Klein uses different materials for a different purpose, and applicant's prior art does not teach anything about combining lower level ballistic fiberglass to achieve higher levels of protection, Klein teaches the concept of being able to stagger his panels that are made of polycarbonate and aluminum which are very high impact resistant materials (col. 4 lines 35-39) so that the impact energy is transmitted throughout the panel system and is dissipated which tremendously reduces the impact transmitted to the panel which would otherwise occur (col. 3 lines 46-59) and applicant's admitted prior art teaches that Levels 1,2, and 3 ballistic panels preexist therefore, placing the

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ballistic panels in any "sequential" order to obtain the desired ballistic protection would have been obvious to any one skilled in the ballistic art.

In response to applicant's argument that there is no suggestion to combine the references because Dickson teaches a laminate wherein applicant's present invention require a rigid material, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dickson teaches that *firing projectiles through such ballistic panels, the first or face portion of the panels absorb the energy of the projectiles in compression before the high tensile strength of the woven filaments take over and resist penetration* (col. 3 lines 30-35) meaning that there are two panels one with a low tensile strength and one with a high tensile strength wherein the energy of the projectiles gets absorbed in the low tensile strength panel before the high tensile strength panel takes over the resist penetration. Applicant's admitted prior art also teaches a plurality row of adjacent abutted sheets of UL listed ballistic fiberglass sheets having a UL listing of any UL level 1, UL level 2, or UL level 3, since applicant teaches that lower level protection ballistic fiberglass are in various combinations of Level 1, Level 2, and Level 3 in page 6 line 33 and page 7 line 1. Dickson was used to teach that the higher level of protection is disposed toward the interior of the

protection zone (col. 2 lines 61-65, col. 3 lines 26-30) for the purpose of having the first face portion of the panels absorb the energy of the projectiles in compression before the high tensile strength of the woven filaments take over and resist the penetration (col. 3 lines 30-35).

Thus, in the absence of any evidence to the contrary, it remains the Examiner's position that the claimed invention is rendered obvious over the prior art of record discussed above.

New Rejections

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Klein et al. (4241457) and in further view of Clear et al. (6119422).

Applicant's admitted prior art and Klein et al. disclose a ballistic resistant zone of protection wall as described above. Applicant's admitted prior art fail to disclose a gypsum board on at least one side of the ballistic zone of protection. Clear teaches a wall panel comprising gypsum board or drywall (col. 7 line 41) for the purpose of preventing impact penetration by defined projectiles moving at defined energies (abstract).

Therefore, it would have been obvious to provide Applicant's admitted prior art with gypsum board, in order to prevent impact penetration by defined projectiles moving at defined energies (abstract) as taught by Clear et al.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

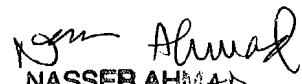
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and none for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee
March 8, 2004



NASSER AHMAD
PRIMARY EXAMINER